



4310-MR-P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

30 CFR Parts 550 and 553

[Docket ID: BOEM–2016–0055; MMAA104000]

RIN 1010–AD95

Oil and Gas and Sulphur Operations in the Outer Continental Shelf-Civil Penalties

Inflation Adjustments

AGENCY: Bureau of Ocean Energy Management, Interior

ACTION: Final rule.

SUMMARY: This rule adopts and finalizes the interim final rule which adjusted the level of the maximum civil monetary penalties contained in the Bureau of Ocean Energy Management (BOEM) regulations pursuant to the Outer Continental Shelf Lands Act (OCSLA), the Oil Pollution Act of 1990 (OPA), the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (FCPIA of 2015), and Office of Management and Budget (OMB) guidance. This rule also implements the 2017 adjustment of the level of the maximum civil monetary penalties contained in the BOEM regulations pursuant to OCSLA, OPA, FCPIA of 2015 and OMB guidance. The 2017 adjustment of 1.01636 percent accounts for one year of inflation spanning from October 2015 to October 2016.

DATES: This rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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I. Background

The Outer Continental Shelf Lands Act (OCSLA) directs the Secretary of the Interior to adjust the OCSLA maximum civil penalty amount at least once every three years to reflect any increase in the Consumer Price Index to account for inflation (43 U.S.C. 1350(b)(1)). The

Federal Civil Penalties Inflation Adjustment Act of 1990 (Public Law 104-410) (FCPIA of 1990) required that all civil monetary penalties, including the OCSLA maximum civil penalty amount, be adjusted at least once every four years.

Similarly, the Oil Pollution Act of 1990 (OPA) authorizes the Secretary of the Interior to impose civil penalties for failure to comply with financial responsibility regulations that implement OPA. The FCPIA of 1990 required that all civil monetary penalties, including the OPA maximum civil penalty amount, be adjusted at least once every four years.

The FCPIA of 2015 requires Federal agencies to promulgate annual inflation adjustments for civil monetary penalties. Specifically, agencies must adjust the level of civil monetary penalties with an initial “catch-up” adjustment through an interim final rulemaking (IFR) in 2016, and make subsequent annual adjustments for inflation, beginning in 2017. Agencies are required to publish the annual inflation adjustments in the *Federal Register* by no later than January 15, 2017, and by no later than January 15 each subsequent year. The purpose of these adjustments is to maintain the deterrent effect of civil penalties and to further the policy goals of the underlying statutes.

OMB Memorandum M-17-11 (Implementation of the 2017 annual adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015), which can be found at https://www.whitehouse.gov/sites/default/files/omb/memoranda/2017/m-17-11_0.pdf, explains agency responsibilities for: identifying applicable penalties and performing the annual adjustment; publishing in the *Federal Register*; finalizing 2016 interim final rules; applying adjusted penalty levels; and performing agency oversight of inflation adjustments.

BOEM is promulgating this 2017 inflation adjustment for civil penalties as a final rule pursuant to the provisions of the FCPIA of 2015 and OMB guidance. A proposed rule is not

required because the FCPIA of 2015 states that agencies shall adjust civil monetary penalties “notwithstanding Section 553 of the Administrative Procedure Act.” (FCPIA of 2015 at sec. 4(b)(2)). Accordingly, Congress expressly exempted the annual inflation adjustments implemented pursuant to the FCPIA of 2015 from the pre-promulgation notice and comment requirements of the Administrative Procedure Act (APA), allowing them to be published as a final rule. This interpretation of the statute is confirmed by OMB Memorandum M-17-11. (OMB Memorandum M-17-11 at 3 (“This means that the public procedure the APA generally requires – notice, an opportunity for comment, and a delay in effective date – is not required for agencies to issue regulations implementing the annual adjustment.”)).

II. 2016 Adjustments and Interim Final Rule

BOEM last adjusted the level of civil monetary penalties in BOEM regulations through an interim final rule (IFR), RIN 1010–AD95 [81 FR 43066], which was published on July 1, 2016, and became effective on August 1, 2016. The IFR included catch-up adjustments pursuant to the requirements of the FCPIA of 2015 and OMB guidance through October 2015. Although the IFR was effective as of August 1, 2016, the IFR included a request for public comments. The public comment period closed on August 30, 2016. BOEM received no comments on the IFR and is therefore finalizing that rulemaking as originally implemented by the IFR. OMB Memorandum M-17-11 authorizes agencies to finalize their 2016 inflation adjustment IFR in the same rulemaking as the 2017 adjustments.

III. Calculation of 2017 Adjustments

Under the FCPIA of 2015 and the guidance provided in OMB Memorandum M-17-11, BOEM has identified applicable civil monetary penalties and calculated the necessary inflation adjustments. The 2016 adjustments were based upon the percent change between the Consumer

Price Index for all Urban Consumers (CPI-U) for the month of October in the calendar year of the previous adjustment (or in the year of establishment, if subsequent adjustments were made pursuant to the FCPIA of 1990) and the October 2015 CPI-U. The 2017 adjustments are based on the percent change between the October CPI-U preceding the date of the adjustment, and the prior year's October CPI-U. Consistent with the OMB Memorandum M-17-11, BOEM divided the October 2016 CPI-U by the October 2015 CPI-U ($241.729 / 237.838$). This resulted in a multiplying factor of 1.01636.

For 2017, OCSLA and the FCPIA of 2015 require that BOEM adjust the OCSLA maximum civil penalty amount. To accomplish this, BOEM multiplied the existing OCSLA maximum civil penalty amount (\$42,017) by the multiplying factor ($\$42,017 \times 1.01636 = \$42,704.40$). The FCPIA of 2015 requires that the OCSLA maximum civil penalty amount be rounded to the nearest \$1.00 at the end of the calculation process. Accordingly, the adjusted OCSLA maximum civil penalty is \$42,704.

For 2017, the FCPIA of 2015 requires that BOEM adjust the OPA maximum civil penalty amount. The statutory OPA maximum civil penalty amount (\$44,539) was multiplied by the multiplying factor ($44,539 \times 1.01636 = \$45,267.66$). The FCPIA of 2015 requires that the OPA maximum civil penalty amount be rounded to the nearest \$1.00 at the end of the calculation process. Accordingly, the adjusted OPA maximum civil penalty is \$45,268.

The adjusted penalty levels shall take effect immediately upon the effective date of the adjustment. Pursuant to the FCPIA of 2015, the increase in the OCSLA and OPA maximum civil penalty amounts apply to civil penalties assessed after the date the increase takes effect, even if the associated violation(s) predates such increase. Consistent with the provisions of the

OCSLA, OPA and the FCPIA of 2015, this rule adjusts the following maximum civil monetary penalties per day per violation:

CFR Citation	Description of the Penalty	Current Maximum Penalty	Multiplier	Adjusted Maximum Penalty
30 CFR 550.1403	Failure to comply per day per violation.	\$42,017	1.01636	\$42,704
30 CFR 553.51(a)	Failure to comply per day per violation.	\$44,539	1.01636	\$45,268

IV. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866 and 13563)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant. (*See* OMB Memorandum M-17-11 at 3).

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to reduce uncertainty and to promote predictability and the use of the best, most innovative, and least burdensome tools for achieving regulatory ends. E.O. 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. We have developed this rule in a manner consistent with these requirements.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency to prepare a regulatory flexibility analysis for all rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule. *See* 5 U.S.C. §§ 603(a) and 604(a). The FCPIA of 2015 expressly exempts annual inflation adjustments from the requirement to publish a proposed rule for notice and comment. (*See* FCPIA of 2015 at § 4(b)(2); OMB Memorandum M-17-11 at 3). Thus, the RFA does not apply to this rulemaking.

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. § 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- (a) Will not have an annual effect on the economy of \$100 million or more;
- (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and
- (c) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on state, local, or tribal governments, or the private sector, of more than \$100 million per year. The rule does not have a significant or unique effect on state, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

E. Takings (E.O. 12630)

This rule does not effect a taking of private property or otherwise have takings implications under E.O. 12630. Therefore, a takings implication assessment is not required.

F. Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. Therefore, a federalism summary impact statement is not required.

G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

- (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

H. Consultation With Indian Tribes (E.O. 13175 and Departmental Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department of the Interior's consultation policy, under Departmental Manual Part 512, Chapters 4 and 5, and under the criteria in E.O. 13175. We have determined that it has no substantial direct effects on Federally-recognized Indian tribes or Alaska Native Claims Settlement Act (ANCSA) Corporations, and that consultation under the Department of the Interior's tribal and ANCSA consultation policies is not required.

I. Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission to the OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

J. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the rule is covered by a categorical exclusion (*see* 43 CFR 46.210(i)). As a regulation of an administrative nature, this rule is covered by a categorical exclusion (*see* 43 CFR 46.210(i)). Therefore, a detailed statement under NEPA is not required. We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

K. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. Therefore, a Statement of Energy Effects is not required.

List of Subjects

30 CFR Part 550

Administrative practice and procedure, Continental shelf, Environmental impact statements, Environmental protection, Federal lands, Government contracts, Investigations, Mineral resources, Oil and gas exploration, Outer continental shelf, Penalties, Pipelines, Reporting and recordkeeping requirements, Rights-of-way, Reporting and recordkeeping requirements, Sulphur.

30 CFR Part 553

Administrative practice and procedure, Continental shelf, Financial responsibility, Outer continental shelf, Oil and gas exploration, Oil pollution, Liability, Limit of liability, Penalties, Pipelines, Reporting and recordkeeping requirements, Rights-of-way, Surety bonds, Treasury securities.

February 3, 2017

Richard T. Cardinale
Acting Assistant Secretary - Land and Minerals Management

Date

For the reasons stated in the preamble, the BOEM adopts as final the interim final rule amending 30 CFR parts 550 and 553, which was published at 81 FR 43066 on July 1, 2016, as a final rule with the following changes:

**PART 550—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER
CONTINENTAL SHELF**

1. The authority citation for part 550 continues to read as follows:

Authority: 30 U.S.C. 1751; 31 U.S.C. 9701; 43 U.S.C. 1334.

2. Revise § 550.1403 to read as follows:

§ 550.1403 What is the maximum civil penalty?

The maximum civil penalty is \$42,704 per day per violation.

**PART 553—OIL SPILL FINANCIAL RESPONSIBILITY FOR OFFSHORE
FACILITIES**

3. The authority citation for part 553 continues to read as follows:

Authority: 33 U.S.C. 2704, 2716; E.O. 12777, as amended.

4. In § 553.51, revise paragraph (a) to read as follows:

§ 553.51 What are the penalties for not complying with this part?

(a) If you fail to comply with the financial responsibility requirements of OPA at 33 U.S.C. 2716 or with the requirements of this part, then you may be liable for a civil penalty of up to \$45,268 per COF per day of violation (that is, each day a COF is operated without acceptable evidence of OSFR).

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